

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JONATHAN MONSARRAT,

Plaintiff,

v.

BRIAN ZAIGER dba
ENCYCLOPEDIADRAMATICA.SE,

Defendant.

CIVIL ACTION NO. 17-cv-10356-PBS

[PROPOSED]

**ORDER ON PLAINTIFF’S MOTION TO STRIKE DEFENDANT’S MAY 26, 2017
ANSWER AND COUNTERCLAIM OR FOR ALTERNATIVE RELIEF.**

This cause came to be heard upon the motion of plaintiff Jonathan Monsarrat pursuant to Fed. R. Civ. P. 12 (f) to strike defendant Zaiger’s May 26, 2017 answer and counterclaim (ECF# 24) or to enter alternative relief in the event the Court grants defendant Zaiger’s May 23, 2017 motion for an extension of time (ECF# 20). The Court finds and rules that:

1. Defendant Brian Zaiger failed to file a response to Plaintiff’s complaint by the May 17, 2017 deadline required by Fed. R. Civ. P. 12(a)(1)(A)(i).
2. Without obtaining permission from the Court to do so on May 26, 2017, defendant Brian Zaiger filed an untimely response to plaintiff’s complaint.
3. This untimely pleading creates serious risks of prejudice to plaintiff Jonathan Monsarrat by adding a counterclaim seeking damages and attorney’s fees and by the presence of one or more otherwise potentially waived affirmative defenses.

4. Defendant Brian Zaiger declined to enter into a stipulation which without prejudice to him would have avoided wasteful motion practice.

Accordingly, IT IS HEREBY ORDERED:

1. The Court defers a decision on this motion pending its decision on defendant Brian Zaiger's May 23, 2017 motion for an extension of time to respond to plaintiff's complaint.
2. If the Court denies the May 23, 2017 motion for extension of time to respond to complaint, the Clerk shall strike defendant Brian Zaiger's May 26, 2017 answer, affirmative defenses and counterclaim filed as ECF # 24.
3. If the Court allows defendant's May 23, 2017 motion for extension of time to respond to complaint, defendant Brian Zaiger's May 26, 2017 answer, affirmative defenses and counterclaim shall be deemed for all purposes to have been first served upon entry of the Order granting the extension.
4. Regardless of the Court's decision on his May 23, 2017 motion, the defendant Brian Zaiger is directed to make a filing on or before June ___, 2017 TO SHOW CAUSE why he should not be ordered to pay plaintiff Jonathan Monsarrat's reasonable legal fees and expenses incurred in connection with or related to plaintiff Jonathan Monsarrat's May 31, 2017 motion to strike.

DATED: _____.

PATTI B. SARIS
UNITED STATES DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on May 31, 2017.

/s/Richard A. Goren

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and on May 3, 2017 I served paper copies to Defendant Does 1-5 by email to contact@encyclopediadramatica.se and to Defendant Brian Zaiger by mail, postage prepaid, to Brian Zaiger, c/o Lafayette Hotel, Room 111, 116 Lafayette Street, Salem Massachusetts 01970-3625 and 4 Davis Street, Beverly MA 01915 and email to zaiger420@yahoo.com , zaiger@gmail.com, zaiger420@gmail.com, and zaiger@aol.com.

ss/Richard A. Goren